

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101
BEFORE THE ADMINISTRATOR

03 DEC -1 AM 8:30
ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

In the Matter of)	
)	
Solomon Corporation)	Docket No.
103 West Main Street)	TSCA -07-2003-0179
Solomon, Kansas)	
)	
Respondent.)	

CONSENT AGREEMENT AND FINAL ORDER

The complaint commencing this proceeding for the assessment of a civil penalty was filed on or about June 12, 2003, pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), when the United States Environmental Protection Agency (Complainant or EPA) issued to Solomon Corporation, Solomon, Kansas, (Respondent) a Complaint and Notice of Opportunity for Hearing.

The Complaint charged Respondent with violations of TSCA Section 15, 15 U.S.C. § 2614, and the regulations promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e) and codified at 40 C.F.R. Part 761.

The Complaint proposes a penalty of Fifty-five Thousand Dollars (\$55,000) for these violations.

CONSENT AGREEMENT

1. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in the Complaint. Respondent neither admits nor denies the factual allegations set forth in the Complaint.

2. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth in the Complaint.

3. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

4. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of Respondent's knowledge, Respondent's Solomon, Kansas facility is presently in compliance with all requirements of TSCA, and the implementing regulations, 40 C.F.R. Part 761.

5. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth below.

6. Respondent understands that the failure to pay any portion of the civil penalty assessed herein in accordance with the provisions of this Order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest thereon at the applicable statutory rate.

7. Although not required by TSCA or any other federal, state or local law, in settlement of this matter, Respondent agrees to undertake the following environmentally beneficial project: Replace its current painting operation with a new operation that will result in the total elimination of hazardous air pollutants from the painting operations in Solomon, Kansas. Respondent will completely eliminate the use of xylene from its painting operations in Solomon, Kansas. Respondent will install two new paint booths; a wash booth and powerwash prep

process. Respondent will replace the paint currently used in its painting operations with a paint that contains no hazardous air pollutants and lower concentrations of volatile organic compounds than the paint currently used by the Respondent.

8. Respondent agrees to expend at least \$220,000 in capital costs to complete this project. Respondent agrees to submit copies of invoices or other documentation to EPA to substantiate these expenditures. If Respondent does not expend at least 90% of \$220,000 (\$198,000) by July 1, 2005 to complete the improvements to the painting operations, Respondent shall pay a stipulated penalty to EPA equal to the difference between the amount expended and \$220,000.

9. Respondent agrees to complete the improvements and have the new painting system operational by July 1, 2005. If Respondent does not complete the improvements to the painting operations set forth in Paragraph 7, by July 1, 2005, Respondent agrees to pay a stipulated penalty of \$52,575. In no event shall the total stipulated penalties due under paragraphs 8 and 9 exceed the sum of \$52,575.

10. On or about April 1, 2004, October 1, 2004 and April 1, 2005, Respondent will provide EPA with a status report on the progress of the projects. Respondent will confirm by letter that the project was completed by July 1, 2005, at which time Respondent's obligations under Paragraph 7 shall be satisfied.

11. Force majeure, for purposes of this Consent Agreement and Final Order, is defined as any event arising from causes not foreseen and beyond the control of Respondent or any person or entity controlled by Respondent, including but not limited to Respondent's contractors, that delays or prevents the timely performance of any obligation under this Order despite Respondent's best efforts to fulfill such obligation. The requirement that Respondent exercise "best efforts to fulfill such obligation" shall include, but not be limited to, best efforts to anticipate any potential force majeure event and address it before, during, and after its occurrence, such that any delay or prevention of performance is minimized to the greatest extent possible. Force majeure does not include reasonable weather conditions, increased costs of the work to be performed under this Consent Agreement and Final Order or financial inability to complete the work.

12. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Agreement and Final Order, whether or not caused by a force majeure event, Respondent shall notify EPA in writing within ten (10) days of the event. Respondent shall provide to EPA the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; all other obligations affected by the force majeure event, and what measures, if any, taken or to be taken to minimize the effect of the event on those obligations; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a force majeure event if it intends to assert such a claim. Respondent shall include with any notice all available documentation

supporting its claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of force majeure for that event.

13. If EPA determines that the delay or anticipated delay is attributable to a force majeure event, the time for performance of such obligation under this Consent Agreement and Final Order that is affected by the force majeure event will be extended by EPA for such time as EPA determines is necessary to complete such obligation. An extension of the time for performance of such obligation affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation, unless Respondent can demonstrate that more than one obligation was affected by the force majeure event. If EPA determines that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of such obligations affected by the force majeure event.

14. If EPA disagrees with Respondent's assertion of a force majeure event, Respondent may elect to submit the matter to the Regional Judicial Officer for dispute resolution. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of Paragraph 12. If Respondent satisfies this

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burden, the time for performance of such obligation will be extended by EPA for such time as is necessary to complete such obligation.

15. If EPA and Respondent can not agree upon any dispute arising out of the completion of the projects set forth in paragraph 7 above, including the applicability of any stipulated penalty for the failure to complete an environmentally beneficial project, the matter will be submitted to the Regional Judicial Officer for dispute resolution.

FINAL ORDER

Pursuant to the provisions of TSCA, 15 U.S.C. § 2601, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Eleven Thousand Seven Hundred Dollars (\$11,700), within thirty days of entry of this Final Order. Payment shall be by cashier's or certified check, made payable to the "United States Treasury" shall be remitted to:

EPA-Region VII
Attn: Regional Hearing Clerk
c/o Mellon Bank
Post Office Box 360748M
Pittsburgh, Pennsylvania 15251.

2. A copy of the check should be sent to:

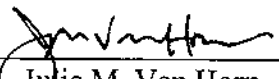
Julie M. Van Horn
EPA-Region VII
Office of Regional Counsel
901 North Fifth Street
Kansas City, Kansas 66101.

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3. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

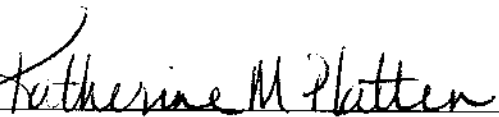
4. Respondent shall implement and complete the environmentally beneficial project set forth in Paragraph 7 of the Consent Agreement. In the event that Respondent does not complete the environmentally beneficial project set forth in Paragraph 7, Respondent shall pay stipulated penalties as set forth in Paragraphs 8 and 9 of the Consent Agreement. Such stipulated penalties shall be immediately due and payable upon written notice to Respondent by EPA.

COMPLAINANT:
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By 
Julie M. Van Horn
Senior Assistant Regional Counsel

Date 26 Nov 2003

RESPONDENT:
SOLOMON CORPORATION
SOLOMON, KANSAS

By 

Title Vice President

Date 11/1/03

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IT IS SO ORDERED. This Final Order shall become effective
immediately.

A handwritten signature in cursive script, appearing to read "Robert Patrick", written over a horizontal line.

Robert Patrick
Regional Judicial Officer

Date December 1, 2003

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CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

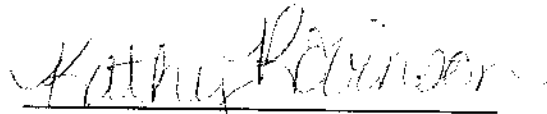
Copy hand delivered to
Attorney for Complainant:

Julie M. Van Horn
Senior Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,
Return Receipt Requested, to:

Lindsay L. Wood
Swanson Midgley, LLC
2420 Pershing Road, Suite 400
Kansas City, Missouri 64108

Dated: 12/1/03



Kathy Robinson
Regional Hearing Clerk